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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application

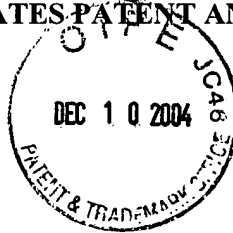
Inventor(s): Tue Nguyen

Appln. No.: 09/589,633

Confirm. No.: 8592

Filed: June 7, 2000

Title: Visual Indicator Cold Trapping System



PATENT APPLICATION

Art Unit:

Examiner: Kiley Stoner

Customer No. 23910

CERTIFICATE OF MAILING UNDER 37 C.F.R. § 1.8

I hereby certify that this correspondence is being deposited in the United States Postal Service with sufficient postage as first class mail in an envelope addressed to Mail Stop Issue Fee, Commissioner for Patents, P.O. Box 1450, Art Unit 2812, Alexandria, Virginia 22313-1450, on December 6, 2004.

(Attorney Signature)

Sheldon R. Meyer, Reg. No. 27,660

Signature Date: December 6, 2004

APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 37 C.F.R. §1.705

Mail Stop Issue Fee
Commissioner for Patents
P.O. Box 1450
Art Unit 2812
Alexandria, VA 22313-1450

Sir:

Applicant(s) hereby request(s) reconsideration of the patent term adjustment indicated in the Notice of Allowance dated July 7, 2004.

A check for the application fee pursuant to 37 C.F.R. §§ 1.18(e)-(f) is enclosed as follows:

_____ Application fee for patent term adjustment due to examination delay under §1.705.
\$200.00.

_____ Request for reinstatement of all or part of the patent term reduced under §1.704(b).
\$400.00.

Review of the Notice of Allowance in the above-referenced application indicates a potential error in the calculation of Patent Term Adjustment ("PTA") for this application, which has been assigned U.S. Patent No. 6,800,254. In particular, the Notice of Allowance and the PAIR system indicate a determination of 891 days of PTA. Applicants respectfully request that the USPTO review this determination for accuracy.

Applicants believe that they are entitled to an adjustment under 37 C.F.R. § 1.703(f) and § 1.704(c)(10) of 942 days. The discrepancy between Applicant's calculated PTA, and that indicated in the Notice of Allowance, appears to be due to the PTO's attribution to Applicant of an additional 51 days of delay, beginning with Applicant's submission of an interview summary on August 16, 2004, and ending with issuance of the allowed patent on October 5, 2004. Applicant believes that the entire 51 day period should not be considered a delay by Applicant. Accordingly, Applicant respectfully requests that the Patent Office revise its calculation of PTA for this application according to the considerations discussed below.

Statement of Facts

In accordance with § 1.705(b)(2), the following facts are set forth below:

1. The PTA requested is 942 days. Applicant respectfully submits that the basis for this calculation pursuant to 37 CFR § 1.702 is as follows: Delay by Applicant amounted to only 4 days from June 10, 2004 to June 14, 2004, as noted on the PAIR report, and not the 55 days set forth in the PAIR report. A copy of a printout of the PAIR report for this application is enclosed herewith. Delay by the Patent Office amounted to 946 days. The total adjustment therefore should be $946 - 4 = 942$ days.
2. An interview summary apparently is recorded on PAIR as a "Miscellaneous Incoming Letter" on August 16, 2004. The interview summary was prepared after the Examiner filed an Examiner-Initiated Interview Summary form PTOL-413B which, according to PAIR, was communicated on July 7, 2004. The Examiner checked the box indicating that it would not be necessary for Applicant to provide a separate record of the substance of the interview.

The PTO has penalized Applicant 51 days for submitting its own interview summary; it is worth noting that the form does not indicate that submission by Applicant of its summary will result in PTA deductions from the PTO's delay. Applicant was not advised of any detriment to submitting a separate paper.

Based on the foregoing, Applicant respectfully submits that Applicant should not be so penalized, and that the additional 51 days should not be subtracted from the PTO's 946 days of delay. The proper PTO delay therefore should be 942 days, rather than 891 days.

In addition to the above statement of facts:

_____ The above referenced application/patent is subject to a Terminal Disclaimer which expires on _____.

 X The above referenced application/patent is not subject to a Terminal Disclaimer.

_____ Under § 1.704, there were no circumstances during the prosecution of the above referenced application/patent constituting a failure to engage in reasonable efforts to conclude processing or examination of such application.

X Under § 1.704, the period of adjustment of patent term is subject to a reduction by the following amount:

Amount of Term Reduction: 4 days

Reason for Term Reduction: See above reasons for reducing the amount of delay calculated for Applicant from 55 days to 4 days

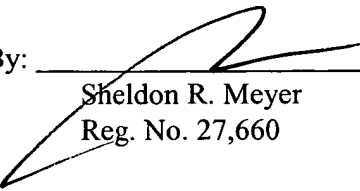
Conclusion

Applicant respectfully submits that an adjustment under 37 C.F.R. §1.703(f) of 171 days is proper. The discrepancy between Applicant's calculated PTA appears to be due to an interview summary filed by Applicant after an interview summary was filed by the Examiner, indicating that no further summary by Applicant was necessary. The PTO attributed 51 days of delay to the paper filed by Applicant, for a total of 55 days of delay. Applicant respectfully submits that the total delay should be only 4 days, after subtracting the 51 days from the 55 total days of delay. The PTA therefore should amount to 942 days. Applicants respectfully request that the USPTO review its determination of PTA in this application for accuracy.

The Commissioner is hereby authorized to charge any deficiencies or credit overpayment to Deposit Account No. 06-1325. A duplicate copy of this authorization is enclosed.

Respectfully submitted,

Date: December 6, 2004

By:  _____
Sheldon R. Meyer
Reg. No. 27,660

FLIESLER MEYER LLP
Four Embarcadero Center, Fourth Floor
San Francisco, California 94111-4156
Telephone: (415) 362-3800

Examiner-Initiated Interview Summary

Application No.

09/589,633

Applicant(s)

NGUYEN ET AL.

Examiner

Kiley Stoner

Art Unit

1725

All Participants:

(1) Kiley Stoner.

(2) Sheldon Myer.

Status of Application: _____

(3) _____

(4) _____

Date of Interview: 7 July 2004

Time: _____

Type of Interview:

☒ Telephonic

☐ Video Conference

☐ Personal (Copy given to: ☐ Applicant ☐ Applicant's representative)

Exhibit Shown or Demonstrated: ☐ Yes ☒ No

If Yes, provide a brief description:

Part I.

Rejection(s) discussed:

Claims discussed:

21-34

Prior art documents discussed:

Part II.

SUBSTANCE OF INTERVIEW DESCRIBING THE GENERAL NATURE OF WHAT WAS DISCUSSED:

A proposed Examiner's Amendment was discussed with Mr. Myer. Mr. Myer agreed to the Amendment placing the application in condition for allowance.

Part III.

☒ It is not necessary for applicant to provide a separate record of the substance of the interview, since the interview directly resulted in the allowance of the application. The examiner will provide a written summary of the substance of the interview in the Notice of Allowability.

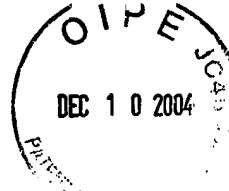
☐ It is not necessary for applicant to provide a separate record of the substance of the interview, since the interview did not result in resolution of all issues. A brief summary by the examiner appears in Part II above.

(Examiner/SPE Signature)

(Applicant/Applicant's Representative Signature – if appropriate)



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EXPLANATION OF PATENT TERM ADJUSTMENT CALCULATION

- What am I viewing?
- What do I do if I do not agree with the patent term adjustment determination?
- What do I do if I have a question about the PAIR screen?

1. What am I viewing?

Applicants are viewing the Patent Applicant Information Retrieval (PAIR) screen which displays the calculated adjustment to the term of the patent. All calculations displayed on the PAIR screen are determined by a computer program that uses the information recorded in the Office's automated patent application information system (the Patent Application Location and Monitoring system or PALM). The computer program will determine the amount of adjustment to the term of patent pursuant to 35 U.S.C. § 154(b) and 37 CFR §§ 1.702-1.705. The computer program will perform the Patent Term Adjustment (PTA) calculations twice. The first calculation will be performed when the Office mails the Notice of Allowance to the Applicant and the second calculation will be performed when the Office mails the Issue Notification Letter to the Applicant. The calculations will not be changed between the time of mailing of the Notice of Allowance and the mailing of the Issue Notification letter.

The PAIR screen displays a series of entries related to the specific application which is being evaluated to ascertain whether the application will receive an adjustment to the term of the patent.

The specific entries are as follows:

(1) APPLICATION FILING DATE. The APPLICATION FILING DATE entry reflects the original filing date of the application and not the date that the application became eligible for adjustment of the patent term due to examination delay. Applications which are eligible for Patent Term Adjustment are original applications (including continued prosecution applications), except for design patents, filed on after May 29, 2000, and patents issued on such applications. See 37 CFR § 1.702(f).

(2) ISSUE DATE. The ISSUE Date entry reflects the date the application will issue as a patent, that is the date the patent is granted and the patent grant is mailed to the applicant..

(3) PRE-ISSUE PETITIONS (days). The PRE-ISSUE PETITIONS entry reflects adjustments to the term of the patent resulting from a request for reconsideration of the patent term adjustment indicated in the notice of allowance and/or a request for reinstatement of all or part of the term pursuant to 37 CFR § 1.705(b). See 37 CFR § 1.705(b) and (c).

(4) POST-ISSUE PETITIONS (days). The POST -ISSUE PETITIONS entry reflects adjustments to the term of the patent for post-issuance request for reconsideration based upon the patent being issued on a date other than the projected date of issue. See 37 CFR § 1.705(d)

(5) USPTO ADJUSTMENT (days). The USPTO ADJUSTMENT entry reflects adjustments to the term of the patent by USPTO personnel which are not generated by the computer program. USPTO personnel may adjust the calculated term of the patent upon review of the application pursuant to 35 U.S.C. § 154(b) and 37 CFR §§ 1.702-1.705.

(6) USPTO DELAY (PTO). The USPTO DELAY entry reflects adjustments of the patent term due to examination

delay other than delays caused by failure to issue a patent within three years of the actual filing date of the application. See 37 CFR § 1.702. The adjustments of the patent term are calculated by the Office's computer program.

(7) **THREE YEARS.** The **THREE YEARS** entry reflects adjustment to the term of the patent due to failure to issue the patent within three years of the actual filing date of the application in the United States. See 35 U.S.C. § 154(b)(1)(B) and 37 CFR §§ 1.702(b). The adjustment to term of the patent for failure to issue the patent within three years of the actual filing date is determined by the computer program.

(8) **APPLICANT DELAY (APPL.).** The **APPLICANT DELAY** entry reflects adjustments of the patent term due to the Applicant's failure to engage in reasonable efforts to conclude prosecution of the application for the cumulative period in excess of three months. See 35 U.S.C. § 154(b)(2)(C) and 37 CFR § 1.704(b). The entry also reflects other Applicant's failure to engage in reasonable efforts to conclude prosecution of the application. See 37 CFR § 1.704(c)(1)-(11). The adjustment due to Applicant(s) delay is determined by the computer program.

(9) **TOTAL PTA.** The **TOTAL PTA** entry reflects the total adjustment to the term of the patent. The **TOTAL PTA** entry is the summation (excluding any time periods which overlap) of the addition of the adjustments to the term of the patent reflected in the **PRE-ISSUE PETITIONS**, **POST-ISSUE PETITIONS**, **USPTO ADJUSTMENTS**, **USPTO DELAY** minus the **APPLICANT DELAY** adjustment or zero, whichever is greater. The cumulative total amount of days adjustment to the term of the patent is determined by the computer program.

(10) **Patent Term Adjustment History** reflects the entries from the **PALM** screen used in determining the amount of patent term adjustment. Shaded areas reflect time frames which cause the total amount of PTA to be adjusted because of Applicant's failure to engage in reasonable efforts to conclude prosecution of the application or the USPTO's examination delays.

2. What do I do if I do not agree with the patent term adjustment determination?

If Applicant does not agree with the patent term adjustment determination as shown on the Notice of Allowance which is reflected on the PAIR screen, Applicant may file an application for patent term adjustment requesting reconsideration of the patent term adjustment determination and any "due care" showing. See 35 U.S.C. § 154 (b)(3)(B) and 37 CFR § 1.705(b) and (c). Applicant must file an application for patent term adjustment **no earlier than the date of mailing of the notice of allowance and no later than the payment of the issue fee. The application for patent term adjustment must be accompanied by the requirements enumerated in 1.704 (b).**

If Applicant agrees with the **TOTAL PTA** determination shown on the Notice of Allowance which is reflected on the PAIR screen, but, believes that all or part of the term of the patent being reduced pursuant to 37 CFR § 1.704 (b) is due to Applicant being unable to respond within three months mailing of the Office communication and Applicant was unable to meet the deadline **in spite of all due care**, then Applicant may file an application for patent term adjustment requesting reinstatement of the period reduced pursuant to 37 CFR 1.704(b). See 37 CFR § 1.705(c). Any request for reinstatement will not be granted for more than the three additional months for each reply beyond three months from the mailing of the application. Applicant(s) must file an application for patent term adjustment **no earlier than the date of mailing of the allowance and no later than the payment of the issue fee. Applicant's request for patent term adjustment requesting reinstatement of all or part of the term must comply with the requirements enumerated in 37 CFR § 1.705(c).**

If Applicant finds that the patent indicates a revised patent term adjustment due to the patent being issued on a date other than the projected date of issue, any request for reconsideration of the patent term adjustment indicated in the patent **must be filed within thirty days of the date of the issued patent and must comply with the requirements of 37 CFR § 1.705(b)(1) and (2).** See 37 CFR § 1.705(d).

3. What do I do if I have a question about the PAIR screen?

If the question is concerning how PAIR works contact the Electronic Business Center (EBC) at (703) 305-3028.

If questions concerning the values on the PAIR screen contact the Technology Center Customer Center Representative for the patent application.



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09/589,633

VISUAL INDICATOR COLD TRAPPING SYSTEM

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APPROPRIATE	APPROPRIATE	APPROPRIATE	APPROPRIATE	APPROPRIATE	APPROPRIATE
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Patent Term Adjustment (PTA) for Application Number: 09/589,633

	Days
Filing or 371(c) Date: 06-07-2000	USPTO Delay (PTO): 946
Issue Date of Patent: 10-05-2004	Three Years: -
Pre-Issue Petitions (days): +0	Applicant Delay (APPL): 55
Post-Issue Petitions (days): +0	Total PTA: 891
USPTO Adjustment (days): +0	Explanation Of Calculations

Patent Term Adjustment History

Date	Contents Description	PTO (Days)	APPL (Days)
10-05-2004	Patent Issue Date Used in PTA Calculation		
09-15-2004	PTA 36 Months		
09-08-2004	Receipt into Pubs		
09-07-2004	Dispatch to FDC		
09-07-2004	Dispatch to FDC		
09-03-2004	Receipt into Pubs		
09-01-2004	Correspondence Address Change		
08-30-2004	Dispatch to FDC		
08-30-2004	Application Is Considered Ready for Issue		
08-24-2004	Receipt into Pubs		
08-16-2004	Mailroom Date of Issue Fee Payment		
08-16-2004	Miscellaneous Incoming Letter	+	51
08-16-2004	Issue Fee Payment Recorded	+	
07-28-2004	Receipt into Pubs	+	
07-24-2004	Workflow - File Sent to Contractor	+	
07-09-2004	Mail Notice of Allowance	+	
07-09-2004	Mail Examiner's Amendment	+	
07-09-2004	Mail Examiner Interview Summary (PTOL - 413)	+	
07-07-2004	Issue Revision Completed	+	
07-07-2004	Notice of Allowance Data Verification Completed	+	
07-07-2004	Examiner Interview Summary Record (PTOL - 413)	+	
07-07-2004	Examiner's Amendment Communication	+	
07-07-2004	Notice of Allowability	+	
06-29-2004	Date Forwarded to Examiner	+	
06-14-2004	Response after Non-Final Action	+	4
06-14-2004	Workflow incoming amendment IFW	+	+
03-10-2004	Mail Non-Final Rejection	946	
03-04-2004	Non-Final Rejection	+	
02-05-2004	Case Docketed to Examiner in GAU	+	
02-03-2004	Case Docketed to Examiner in GAU	+	
09-16-2003	IFW TSS Processing by Tech Center Complete	+	
03-27-2003	Case Docketed to Examiner in GAU	+	
11-13-2000	Case Docketed to Examiner in GAU	+	
09-20-2000	Transfer Inquiry	+	
08-29-2000	Application Dispatched from OIPE	+	
08-02-2000	Correspondence Address Change	+	
06-28-2000	IFW Scan & PACR Auto Security Review	+	
06-07-2000	Initial Exam Team nn	+	

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